CRIMINAL APPEAL No. 130 OF 1988
With
CRIMINAL APPEAL NO. 131 OF 1988
With
CRIMINAL APPEAL NO. 143 OF 1988

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Against the judgment and order dated 25.2.1988 passed by Sri Chakradhar Rai, Additional Sessions Judge IX, Patna, in Sessions Trial No.59 of 1984.

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In Cr. Appeal No.130 of 1988

1.Sahdeo Mahto
2.Ram Baran Mahto----------Appellants
Versus
The State of Bihar----------Respondent

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In Cr. Appeal No.131 of 1988

1.Ram Briksh Mahto
2.Krishna Mahto
3.Indradeo Mahto
4.Ram Ashish Mahto
5.Ram Nandan Mahto
6.Jugal Mahto
7.Ram Ashray Mahto----------Appellants
Versus
The State of Bihar----------Respondent

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In Cr. Appeal No.143 of 1988

Raghu Nandan Yadav----------Appellant
Versus
The State of Bihar----------Respondent

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For the Appellants: Mr. Ram Balak Mahto, Sr.Advocate
Mr. Ramnandan Pd. Sinha, Advocate
(In all criminal appeals)

For the State : Mr. Lala Kailash Bihari Prasad,
Sr. Advocate
(In all criminal appeals)

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P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE SYED MD.MAHFOOZ ALAM

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S.M.M.Alam, J. All the ten appellants in three appeals have preferred these criminal appeals against the judgment and order dated 25.2.1988, passed in Sessions Trial No.59 of 1984, by the then 9th Additional Sessions Judge, Patna, whereby he has been pleased to convict all the abovenamed appellants under Section 302/149 of the Indian Penal Code (hereinafter called "I.P.C."), and sentenced each of them to undergo rigorous imprisonment for life. They have further been convicted under section 323 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for one year. Appellant Sahdeo Mahto has been convicted under Section 302/109 of the I.P.C., and sentenced to undergo rigorous imprisonment for life and to undergo rigorous imprisonment for three years under Section 324 of the I.P.C. The learned Additional sessions Judge has been pleased to order that all the sentences shall run concurrently.

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2. The prosecution case, in brief, is that on 24.3.1983, at 7 A.M., Bhim Prasad (P.W.1), who happened to be the son of Ramchandra Singh, came to Mokama Police Station and submitted a written statement attributed to injured Ramchandra Singh (now deceased) having his L.T.I. over the same stating therein that in the night of 23/24.3.1983 he was sleeping at his

Khalihan situated at Mahadeo Asthan. At about 11 P.M., he heard the sound of foot-steps whereupon he woke up and tried to get up from his cot flashing torch light. In the meantime, he was surrounded by Sahdeo Mahto, Raghunandan Mahto, Ram Baran Mahto, Ramashray Mahto, Ramashish Mahto, Ramsagar Mahto, Ramnandan Mahton, Jugal Mahto, Krishna Mahto, Indradeo Mahto and Ram Briksh Mahto. They all belonged to village Dhanal Dobh, P.S. Mokama, District, Patna. Out of the abovenamed persons, appellant Sahdeo Mahto ordered to kill him and simultaneously, gave bhala blow which struck on the upper portion of his eye. After that, appellants Raghunandan Yadav, Ram Baran Mahto, Ramashray Mahto, Ramashish Mahto, Jugal Mahto, Ramnandan Mahto and one Ram Sagar Mahto (not appellant) assaulted him with bhala and Krishna Mahto, Indradeo Mahto and Ram Briksh Mahto assaulted him with lathi. Jagdish Singh (P.W.9) was sleeping near the said place of occurrence. He started raising alarm whereupon he was also assaulted by the abovenamed persons with bhala and lathi. On hulla, Radheshyam Singh (P.W.4), Ram Swarath Singh alias Ram Swarath Sharma (P.W.8), Ram Kishori Singh (P.W.2), and Dinesh Singh (P.W.3) came there and saw the occurrence in the torch light. On seeing them coming, the abovenamed persons fled away. The motive of the occurrence was that above named persons were in the habit of committing theft of crops and grazing the standing crops by their cattle and one day prior to the occurrence the informant had asked them not to graze their

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cattle and not to damage the standing crops which had caused annoyance to the abovesaid persons and on that, an altercation had taken place between the informant and appellant Sahdeo Mahto, who had threatened him to do away with his life.

3. On submission of the written report by P.W.1 Bhim Prasad Singh, initially a case bearing Mokama P.S. Case No.72 dated 24.3.1983 under Sections 147, 148, 149, 307, 323 and 324 of the Indian penal Code was instituted and investigation of the case was taken up by S.I. Parshuram Singh (P.W.11), but during investigation the injured Ramchandra Singh died on 9.4.83 and as such, Section 302 of the I.P.C. was also added.

4. During investigation P.W.11 visited the place of occurrence, recorded the statements of the witnesses and prepared seizure list, also recorded the statement of injured Ramchandra Singh (now deceased), prepared inquest report and obtained post-mortem report of the deceased and thereafter submitted charge sheet against the appellants on the basis of which the learned A.C.J.M., Barh, took cognizance and then he committed the case to the Court of Session, vide order dated 16.2.1984. Thereafter on 2nd May, 1986, charges were framed under different heads against the appellants who pleaded not guilty and claimed to be tried and then they were put on trial and by the impugned judgment, they were convicted and sentenced as stated above.

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5. The defence of the appellants was total denial of the occurrence and of false implication and that no such

occurrence had taken place in the manner as alleged by the prosecution on the alleged date and time and on the alleged place of occurrence.

6. In support of its case, the prosecution has examined as many as 11 witnesses, namely, Bhim Prasad Singh P.W.1, Ram Kishori Singh P.W.2, Dinesh Singh P.W.3, Radheshyam Singh P.W.4, Dr. B.K.Sethy P.W.5, Brahmdeo Prasad Singh P.W.6, Dr. Baldeo Prasad Singh P.W.7, Ram Swarath Singh @ Ramswarath Sharma P.W.8, Jagdish Singh @ Jagdish Kumar P.W.9, Raj Nandan Singh P.W.10 and Parshuram Singh P.W.11. Besides the oral evidence, the prosecution has brought some documentary evidence which have been taken as exhibits. Ext.1 is the written statement of the deceased. Ext.2 is the injury report of deceased Ramchandra Singh. Ext.2/1 is the injury report of Jagdish Singh (P.W.9). Ext.3 is the bed-head ticket. Ext.4 is the inquest report. Ext.5 and Ext.5/1 are signatures of Brahmdeo Singh and Ramashish Sharma over Ext.4.

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7. The defence has neither examined any defence witness nor has brought any documentary evidence on record.

8. According to the written report (Ext.1), the prosecution case, as disclosed by deceased Ramchandra Singh, is that in the night of 23/24.3.1983 at about 11 P.M. while he was sleeping in the **Khalihan** situated at **Mahadeo Asthan,** he felt the sound of foot-steps of some persons whereupon he tried to get up and flashed torch light and in the torch light he identified the above named appellants besides one Ram Sagar

Mahto. They all surrounded him and thereafter Sahdeo Mahto exhorted others to kill him and himself gave bhala blow causing injury to him just above the eye and then Raghunandan Mahto, Baran Mahto, Ramashray Mahto, Ram Sagar Mahto (not appellant), Ramashish Mahto, Jugal Mahto and Ram Nandan Mahto assaulted him with bhala and appellants Krishna Mahto, Indradeo Mahto and Ram Briksh Mahto assaulted him with lathi. It is also the prosecution case that when Jagdish Singh (P.W.9) came to rescue him, he was also assaulted by the appellants with bhala and lathi. Ramchandra Singh being injured was taken to Nazarath Hospital, Mokamah, where during the treatment he succumbed to his injuries.

9. Let me see - whether the above prosecution case, as disclosed by deceased Ramchandra Singh in Ext.1, finds support from the evidence available on record or not. In this regard first of all, I would like to incorporate the evidence of (P.W.5) Dr. B.K.Sethy, Surgeon Incharge, Nazarath Hospital, Mokamah, who had examined injured Ramchandra Singh (now deceased). His evidence is as follows:-

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On 24.3.1983 at 1.45 A.M. he had examined injured Ramchandra Singh aged about 60 years and found the following injuries on his person:-

(i) Left eye black with bleeding with deep laceration 2 1/2" x 1" on the left upper orbital margin to the nose between eyeball and bone. Also fracture of the orbital bone

with severe bleeding through both nostrils, left vision doubtful.

(ii) Carved lacerated cut 1" x 1/4" x bone deep. Also fracture felt on left zygomatic bone.

(iii) Two laceration, bleeding, each measuring 1" x 1/2" left cheek bleeding.

X-ray for above injuries, skull and face was taken which showed fracture of frontal bone and supra-orbital margin. Both maxillary autrum seen opaque.

(iv) Laceration ½" x ½" x bone deep on the left forearm with deformity and fracture felt. X-ray taken left forearm showed double fracture of ulna upper 1/3rd and lower 1/3rd.

(v) Lacerated cut left arm ½" x ½" x muscle deep.

(vi) Lacerated cut 2" x 1" x full thickness percostum of the bone cut on the left side of scalp Periostinal was ½" x ¼" area was damaged.

(vii) Laceration 1" x ½" on the left parietal area.

He has opined that injury nos. (i), (ii), (iii), (iv) and (vi) were grievous in nature caused by sharp, heavy objects with pointed edge may be by bhala. With regard to injury nos.

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(v) and (vii), P.W.7 has opined that the same are simple in nature caused by sharp, long object such as bhala. He has further opined that all the injuries were caused within 3 to 6 hours. He has proved injury report which has been marked as Ext.2.

10. Another important witness on this point is P.w.7 Dr.Baldeo Prasad Singh as he had conducted post-mortem examination of the dead body of deceased Ramchandra Singh. I would like to incorporate his evidence also. His evidence is as follows:-

On 9.4.83 he was posted as C.A.S. at Sub-divisional Hospital, Barh. On the same day at 2.30 P.M. he held post-mortem examination on the dead body of Ramchandra Singh which was brought from Nazarat Hospital, Mokama. On examination of the dead body, he found the following injuries.

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(A) <u>Head</u>

(i) Left side of the frontal part of the head, healed wound size 1".

(ii) Mid of the head direction interior posterior, healed wound size 2"

(iii) Right eye and area surroundings it swelling brownish black size 2 ½" x 2 ½".

(iv) Conjunctivitis of right eye colour reddish.

(v) Swelling in the front of the right ear, size 2" x 1". On opening of the swelling foul, swelling pus came out.

(vi) On opening the skull membrane were congested, blood clot was present on the frontal region of brain.

(B) Left Upper Limbs

(i) Plaster was present on the half of the palm and above. On opening the plaster and dissecting the palm, fracture of the ulna and callus was present.

© Right upper limb near the wrist joint

(i) wound in the stage of healing size ¼" x ¼" x ¼"

(C) **Heart Chamber**

(ii) Left heart empty, right heart slight amount of blood was found.

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P.W.7 has opined that all the injuries were ante-mortem in nature. Injury nos. (iii), (iv) and (v) of 'A' and injury no.1 of 'B' were caused by hard and blunt substance, may be by lathi or lathi portion of bhala. Regarding injury nos. (i) and (ii) of 'A', and injury No.(i) of 'C', P.W.7 has deposed that it was difficult to assess with what weapon the same were caused due to surgical interference. P.W.7 has further deposed that the injuries found by him on the person of deceased Ramchandra Singh were sufficient in the ordinary course of

nature to cause death and the cause of death was head injury. He has proved his post-mortem report which has been marked Ext.6.

11. From the evidence of P.W.5, it is established beyond doubt that on 24.3.83 at 1.45 A.M., deceased Ramchandra Singh was admitted into Nazarath Hospital, Mokamah, for treatment of his injuries. The evidence of P.W.7 supports that the dead body of Ramchandra Singh was brought from Nazarath Hospital for post-mortem examination. The evidence of P.W.5 further shows that injured Ramchandra Singh had as many as seven injuries on his person and some were grievous, whereas some were simple in nature and the same were caused by sharp-cutting weapon such as bhala. His evidence further shows that he had found at least two injuries near his left eye as a result of which left orbital bone and left zygomatic bone were found fractured which were also confirmed by X-ray. The evidence of P.W.7, who had conducted post-mortem examination on the dead body of Ramchandra Singh, also supports that he had found healed wound of the size of 1" on the left side of frontal part of the head of the deceased besides one injury of 2" size on the mid of his head. Thus, the evidence of the two doctors supports the prosecution story that during the occurrence the deceased had sustained injuries on his person. However, there appears some contradiction in the evidence of P.W.5 and P.W.7 with regard to the weapon used in the commission of the offence. According to P.W.5, most of the

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injuries were caused by means of sharp-cutting weapon(s) such as bhala but, according to P.W.7, all the injuries were caused by hard and blunt substance. In my view, this contradiction between the evidence of P.W.5 and P.W.7 does not adversely affect the prosecution case as P.W.7 has explained it by saying that due to surgical interference he was not in a position to assess with what weapon injury nos. 1 and 2 of 'A' and 1 of 'C' were caused. However, both the witnesses (P.W.5 and P.W.7) are unanimous that the injuries were sufficient in the ordinary course of nature to cause death of the deceased which proved beyond doubt that due to the above-mentioned injuries deceased Ramchandra Singh had died.

12. Now I will examine as to whether the prosecution witnesses have been able to prove the prosecution case that those injuries were caused to the deceased by the appellants on the alleged date and time of occurrence. I have already found above that injured Ramchandra Singh, who was the informant of this case, had succumbed to his injuries during course of treatment, as such he was not available before the trial court to give his evidence in support of his written report but P.W.11 Parshuram Singh, who is the Investigating Officer, has deposed at paragraph 6 of his deposition that he had recorded the further statement of the informant Ramchandra Singh which has been incorporated in the case diary. He has proved the said further statement of Ramchandra Singh which has been marked as Ext.9. Since Ramchandra Singh is now dead,

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as such his statement recorded under Section 161 of the Code of Criminal procedure is admissible in the evidence and can legally be taken into consideration. **His evidence shows that he has supported his written report (Ext.1).**

13. It has been argued by the learned Advocate of the appellants that the written statement as well as further statement of Ramchandra Singh are doubtful pieces of evidence and no reliance can be placed upon them. At an appropriate stage, I would like to discuss this argument of the learned Advocate of the appellants.

14. Coming to the evidence of the prosecution witnesses, first of all I would like to discuss the evidence of P.W.1 Bhim Prasad Singh, who is the son of the informant (now deceased) and although he is not an eye witness of the occurrence but his evidence is important as he was the author of the written statement attributed to deceased Ramchandra Singh. His evidence is as follows:-

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Ramchandra Singh was his father. The occurrence took place in the night of 23/24 March, 1983. It was Wednesday night. On the dictation of his father, he had scribed the written statement and thereafter his father had put his L.T.I over the same (marked Ext.1). He has further deposed that at the time of dictating the written statement, his father was fully conscious. He has further deposed that he had seen the injuries on the person of his father who was admitted to Nazarath Hospital, Mokamah, and that he had accompanied his

father to the Hospital. He has further deposed that on 9.4.1983, at about 10 A.M., his father died. He has further deposed that he had handed over the written statement of his father (Ext.1) to Mokama Police Station on 24.3.1983, at about 7 A.M.

15. The evidence of P.W.1 establishes that he is not an eye-witness of the occurrence, and with regard to the manner of occurrence and the identity of person who had caused injury to his deceased father, he is silent and has not stated any word in his examination-in-chief. However, his evidence is important in this respect that he is the author of Ext.1 which discloses the manner of occurrence and the names of the accused persons who had caused injuries on the person of the deceased on the alleged date of occurrence. The evidence of P.W.1 further shows that he had seen the injuries on the person of his father and he had taken him to Nazarath Hospital, Mokama, for treatment and that till he was admitted into Nazarath Hospital, he was in conscious condition. The fact that the deceased was in state of consciousness is also established from the evidence of P.W.5 Dr. B.K. Sethy who has deposed at paragraph 3 of his deposition that at the time of his examination, the patient was fully conscious and his speech was fair. Admittedly, P.W.5 being a doctor is an independent witness and there is nothing on record to show that he was influenced in any manner by the prosecution side, as such there is no reasonable ground to believe that P.W.5

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has falsely deposed that when Ram Chandra Prasad Singh was admitted to Hospital, he was fully conscious. I, therefore, discard the argument of the learned Advocate of the appellants that after sustaining such serious injuries, Ramchandra Prasad Singh (deceased) could not have remained in a state of consciousness and hold that from the evidence of P.Ws.1 and 5, it is established that deceased Ramchandra Singh was in a state of consciousness till he was admitted into Nazarath Hospital and that he was also in a position to speak. Thus, I do not find any infirmity in the evidence of P.w.1 except his statement that he had scribed the written statement (Ext.1) partly on bullock-cart and partly in Nazarat Hospital, Mokama.

16. It was argued by the learned Advocate of the appellants that the writing of Ext.1 shows that it would have never been possible to write it on the bullock-cart while the bullock-cart was moving ahead. I am of the view that if the statement of P.W.1 made at paragraph 5 is minutely read then it would mean that Ext.1 was partly scribed at Government Hospital and partly at Nazrath Hospital. So, this argument of the defence does not appeal to my mind.

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17. The next witness, i.e. P.W.2 Ram Kishori Singh, is on the point of occurrence. He has deposed that at the time of occurrence deceased Ramchandra Singh was in his **Khalihan** at Dhanakdobh Mahadeo Asthan. The said **Khalihan** was in the east of his own **Khalihan** situated at a distance of 10 to 20 Yards. He has further deposed that **Khalihan** of Jagdish Singh,

Radheshyam and Ram Swarath were also situated near his Khalihan. He saw the accused persons coming from the western side and identified Sahdeo Mahto, Raghunandan Yadav, Baran Mahto, Ramashray Mahto, Ram sagar Mahto, Ramashish Mahto, Jugal Mahto, Ram Nandan Mahto, Krishna Mahto, Indradeo Mahto and Ram Briksh Mahto. Krishna, Indradeo and Ram Briksh were armed with lathi whereas rest were armed with Bhala. He has further deposed that he identified the above-named persons in the moonlit night and also in the torch light. They all went near the cot of Ramchandra Singh and appellant Sahdeo Mahto gave order to kill him and simultaneously, he attacked Ramchandra Singh with bhala. Thereafter all the other accused persons assaulted him with their respective weapons. Jagdish (P.W.9) rushed to save Ramchandra Singh whereupon he was also assaulted by Ram Baran Mahto and Raghunandan Mahto. When some persons from nearby **Khalihan** assembled, the above named persons fled away. P.W.2 has further deposed that the other witnesses also identified the appellants in the torchlight. After the occurrence injured Ramchandra Singh was sent to Mokama Hospital on bullock-cart.

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18. The next witness on the point of occurrence is P.W.3 Dinesh Singh. His evidence is as follows:-

The occurrence took place about 3 ¼ years ago in the month of **Phagun**. It was Wednesday night. At that time he was in his **Khalihan**. Ramchandra Singh (deceased) was sleeping on a cot. The **Khalihan** of Ramchandra Singh is towards south of his

Khalihan. He saw sahdeo Mahto, Raghu Yadav, Baran Mahto, Ramashray Mahto, Sagar Mahto, Ramashish Mahto, Jugal Mahto, Ramnandan Mahto with bhala in their hands, Krishna Mahto, Indradeo Mahto and Ram Briksh Mahto with lathi in their hands assaulting Ramchandra Singh. He flashed torch light and in the torchlight he identified all the above named persons. He has further deposed that at the time of occurrence Kishori Singh (P.W.2) was raising hulla and on his hulla several persons of the vicinity reached there who were watching their fields from their respective **Khalihans**. He has further deposed that besides Ramchandra Singh, Jagdish singh (P.W.9) was also assaulted. He saw several injuries on the person of Ramchandra Singh who was in a state of consciousness and he was in a condition to speak. He was removed to the hospital for his treatment. At paragraph 11 of his cross-examination he has deposed that the **Khalihan** of deceased Ramchandra Singh was at a distance of about 2 to 4 bans (bamboo) from his **Khalihan.** He has further deposed in the same paragraph that one bamboo is equal to 5 ½ hand which goes to show that the **Khalihan** of this witness was nearer to **Khalihan** of the deceased Ramchandra Singh and there was every possibility of his identifying the assailants of Ramchandra Singh from such a short distance in the moonlit night and in the light of torch. It appears that the attention of this witness was drawn towards his previous statement made before the police specially with regard to the fact that he had not stated before the police that he had

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identified the accused persons of this case in the torchlight which also finds corroboration from the evidence of the Investigating Officer but I am of the view that it does not make his evidence unacceptable, as the visibility capacity of the persons having rural background are stronger than persons coming from urban background and they can easily identify known persons even from some distance in dim light or moonlit night. There are sufficient evidence on record that the night was moonlit night so even in absence of torch-light it can be believed that the witnesses were in the position to identify the accused persons in the moonlit night. Moreover, the presence of P.W.3 at the place of occurrence at the time of the alleged occurrence finds support from the evidence of other prosecution witnesses also.

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19. The next witness on the point of occurrence is P.W.4 Radhe Shyam Singh. His evidence is that on the alleged date and time of occurrence he was also at his **Khalihan** which is situated towards north of Khalihan of Ramchandra Singh (deceased). He has further deposed that at about 11 P.M., while he was taking rest in his Khalihan after taking meal, he heard sound of foot-steps whereupon he flashed torch-light and saw some persons assaulting Ramchandra Singh with lathi and bhala. Amongst them he identified Sahdeo Mahto, Raghu Nandan Yadav, Ram Baran Mahto, Ramashray Mahto, Ram Sagar Mahto, Ramnandan Mahto, Jugal Mahto, Ramashish Mahto, Krishna, Ram Briksh Mahto besides one more person. Amongst them, Krishna

and Ram Briskh and one more person were armed with lathi and rest were armed with bhala. He has further deposed that persons who were armed with bhala were moving their weapons like lathi. He has further deposed that P.W.9 Jagdish Singh was also assaulted by Sahdeo Mahto, Ram Baran Mahto and one more person. He has further deposed that he went near Ramchandra Singh after the accused persons fled away and saw him in injured condition, but he was in a state of consciousness and was able to speak. He was removed to the hospital and he was admitted into Nazarath Hospital, Mokama. The cross-examination of P.W.4 shows that he was cross-examined at length in order to establish that he has falsely deposed that he has got his **Khalihan** near the **Khalihan** of the deceased but I find that he has stood the test of his cross-examination and his presence at the place of occurrence can not be doubted.

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20. The next witness on the point of occurrence is P.W.8, Ram Swarath Singh alias Ram Swarath Sharma. His evidence is also more or less on similar pattern as of P. Ws. 1, 2, 3 and 4. He has also deposed that on the alleged date of occurrence he was also sleeping in his **Khalihan,** situate towards northern corner from the **Khalihan** of deceased Ramchandra Singh, and on hearing the sound of **Khatkhat** he woke up and in the torch light, he witnessed the entire occurrence. Since his remaining statement is similar to the statements of the other witnesses, as such I am not repeating his evidence to encumber

the record. He was cross-examined on this point that the State dispensary as well as Police Station lie on way to Nazarath Hospital, Mokama, in order to show that the occurrence was not immediately reported to the police station and the averment made in the written statement is after-thought and given after deliberation and consultation. But in my view, this stand of the defence is not acceptable in view of the fact that admittedly, to save the life of injured Ramchandra was the first priority and the Nazarath Hospital is better equipped and it was wise step of the prosecution side to firstly take the injured to the said hospital for better treatment and then to report the matter to the police.

21. P.W.9 Jagdish Singh alias Jagdish Kumar is another important witness on the point of alleged occurrence because of the fact that, according to the prosecution case, he had also received injuries on his person during the alleged occurrence at the hands of the appellants. His evidence is as follows:-

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The occurrence took place in the night of 23/24 March 1983. Time was 11 P.M. At that time he was at his **Khalihan** which was adjacent west to **Khalihan** of Ramchandra Singh (deceased). The night was moonlit night. He saw 11 persons having weapons in their hands assaulting Ramchandra Singh. He identified appellants, Sahdeo Mahto, Raghunandan Yadav, Baran Mahto, Ram Sagar Mahto (not put on trial), Ramashray Mahto, Jugal Mahto, Ramanandan Mahto, Ramashish Mahto, having bhala in their hands

and Indradeo Mahto, Krishna Mahto and Ram Briksh Mahto with lathi in their hands. Appellant Sahdeo Mahto gave order to kill Ramchandra Singh whereupon all the accused persons started assaulting Ramchandra Singh with their respective weapons. Sahdeo Mahto used sharp portion of bhala during the assault whereas other accused used bhala as lathi. He raised hulla whereupon other persons came running towards the place of occurrence. He has further deposed that Sahdeo Mahto also assaulted him with bhala causing injury on the back side of his head and Krishna Mahto and Indradeo Mahto assaulted him with lathi as a result of which he received injuries on both his arms. On arrival of the witnesses, all the miscreants fled away. Thereafter he went near Ramchandra Singh and found him injured. He along with Ramchandra Singh were firstly taken to the Government Hospital and from there they were moved to Nazrath Hospital, Mokama, where both the persons were treated. He has identified all the accused persons who were present in dock.

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22. Paragraph 10 of the cross-examination of P.W.9 shows that the defence has drawn his attention towards his previous statement made before the police under Section 161 of the Cr.P.C. in order to establish that he was not an eye-witness of the actual occurrence, paragraphs 28 and 29 of the evidence of P.W.11 Parsuram Singh (Investigating Officer) show that in the above-mentioned paragraphs the defence had asked questions from him with regard to the previous statement of P.W.9 made

under Section 161 of the Cr.P.C. Paragraph 29 shows that the defence has exhibited the statement of P.W.9 made before the police under Section 161 of the Cr.P.C. which has been marked Ext. A on the basis of the evidence of P.W.11 at paragraphs 28 and 29 and also on the basis of the statement of P.W.9 before the police. As per Ext.A, the learned defence counsel argued that P.W.9 Jagdish Singh could never be an eye-witness of the occurrence but I cannot accept this argument of the learned defence counsel in view of the fact that even Ext.A shows that P.W.9 had stated before the Police that immediately after the assault he had seen at least appellants Sahdeo Mahato having bhala in his hand, Raghunandan Yadav, Baran Mahto (Ram Baran Mahto) and Indradeo Mahton along with others, namely, Brahmdeo Mahto, and Harangi Mahto (not accused) coming from the side of the place of occurrence whereupon he raised hulla and on hulla he was also assaulted by appellant Sahdeo Mahto with bhala. Thus, Ext. A also supports this fact that at the time of alleged occurrence P.W.9 was present in his **Khalihan** and although he had not seen the actual assault, but he had seen some of the accused persons coming from the side of the place of occurrence with weapons in their hands and when P.W.9 along with other witnesses reached near Ramchandra Singh they found him in injured condition. So the presence of P.W.9 at the P.O. at the time of occurrence is never in doubt and, therefore, his evidence in Court that he had seen the appellants assailing deceased Ramchandra Singh cannot be

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discarded merely on the ground that before the police he had said that he had identified some of the appellants while they were running away. In my view, P.W.9 is a trustworthy witness, being an injured witness, which finds corroboration from the evidence of P.W.5, Dr. B.K. Sethy, who has deposed at paragraph 6 of his deposition that on 24.3.83 itself, at about 1.45 A.M., he had examined Jagdish Singh P.W.9 and on examination he had found as many as four injuries on his person which were caused by hard and blunt substance as well as by sharp-cutting weapon such as bhala. He has proved the injury report of P.W.9 Jagdish Singh which has been marked as Ext.2/1 in this case.

23. It has been argued by the learned Advocate of the appellants that P.W.11, the I.O., has stated in his evidence that he had not found any injury on the person of Jagdish Singh (P.W.9). He has referred paragraph 16 of P.W.11 in this regard. It is true that P.W.11 has stated at paragraph 16 of his evidence that he did not find any injury on the person of Jagdish Singh at the time of his recording the statement under Section 161 of the Cr.P.C. but strangely enough, there is mention in Ext.A (statement of P.W.9 recorded by the Investigating Officer under Section 161 of the Cr.P.C.) that he also had sustained injuries at the hands of the accused persons. In such view of the matter, if there was no injury on the person of Jagdish Singh then the Investigating Officer should have enquired from him as to why he was falsely stating

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that he was also assaulted by the accused persons. It goes to prove that the Investigating Officer (P.W.11) was working in a mechanical manner and after recording the statement of p.W.9 he did not write any injury report. I have already stated above that P.W.5 is an independent witness and there is no reason as to why he will falsely depose in favour of the prosecution. Thus, I find and hold that P.W.9 is a trust-worthy witness and his presence at the place of occurrence and at the time of alleged occurrence can never be doubted.

24. It was also pointed out that as per the evidence of the prosecution witnesses they had seen the occurrence in the torch light but no such torch was produced before the Investigating Officer. Under such situation, adverse inference should be drawn that the witnesses have falsely deposed that they had seen the occurrence in the torch light and, therefore, on this score alone the accused persons are entitled for benefit of doubt. In this regard, the learned defence counsel has placed reliance upon the decision of our own High Court in the case of Mangal Singh and five others, Appellants vrs. State of Bihar and others, Respondents reported in 1990 PLJR (1) Page 755. The relevant lines from paragraph 30 of the decision are quoted below:-

> "There are contradictory statements of P.Ws.3 and 4 so far as means of identification is concerned. PW4 in the F.I.R. has said that he flashed the torch and in its light identified the assailant. There is no whisper of any electric bulb light in the F.I.R.

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but PW 3 has said that he also identified the assailant in the electric light. In the F.I.R. PW4 has said that he flashed the torch light and in the court he has stated that he showed the said torch to the I.O. which has been denied by the I.O. PW 9. In this connection it is also relevant to state here that PW 3 has done a step further that besides torchlight, he also identified the accused persons in the light of electric bulb which was burning on the electric pole near the place of occurrence. The means of identification i.e. torch has not been produced either in the court or during the course of investigation before I.O. as stated by him. Therefore, the factum of identification also becomes doubtful. In this connection, reference may be made to a decision in the case Amirchand Ahir and others Vs. state of Bihar, 1977 B.B.C.J. 400, where it has been held that non-production of the only means of identification, namely, the torch in question in the present case, makes the prosecution case all the more doubtful. The Hon'ble Supreme Court in the case of State of Uttar Pradesh vs. Hari Prasad and others A.I.R. 1974 S.C. 1740 has observed that where the occurrence had taken place in a dark night and witnesses claimed to have identified the accused in the light of lantern, the existence whereof had been found to be doubtful, the accused was entitled to the benefit of doubt. In the instant case, the means of identification has not been produced in the court or during the course of investigation. Therefore, on this ground also, in our opinion, the appellants are entitled to the benefit of doubt."

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25. In reply to the argument advanced by the defence counsel, the learned State counsel has argued that the visions

of people living in the rural areas are usually very strong and even in very dim light, they are able to identify the persons who are familiar to them. He submitted that the witnesses have deposed that it was moonlit night when the occurrence took place which has not been controverted by the defence and, therefore, even if it is believed that the witnesses had no torch in their hands even then they could identify the familiar faces in the moonlit night easily. In this regard, reliance has been placed upon the decision of the Apex Court in the case of Kalika Tiwary and others, Appellants Vrs. State of Bihar, Respondent reported in 1997 (2)PLJR (SC) 1. Paragraph 16 of the said decision is relevant which is being incorporated hereunder:-

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> "The learned counsel for the appellants pointed out from evidence that the only light then available for PW1 Sanfula Devi was an earthen lamp burning inside the room. On that score he contended that the said light was too meager to identify the participants of the crime. The visibility capacity of urban people who are acclimatized to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light."

26. Another decision has been cited by the learned State counsel on this point is PLJR 2001 (4) (SC) Page 123 (Ram Gulam Choudhary and others, Appellants Versus The State of

Bihar, Respondent) in which the same view has been taken by the Apex Court. Placing reliance upon the above two decisions, I am also of the view that only on this ground that the witnesses did not produce torch before the Investigating Officer, they cannot be held to be untrustworthy in view of the fact that there is uncontroverted evidence on record that it was moonlit night when the occurrence took place and since the witnesses come from the village background, as such they could have easily identified the appellants in the moonlit night as their faces were familiar to them. In such view of the matter, I hold that the argument of the learned Advocate of the defence counsel that since the only means of the identification i.e. the torch, was not produced by the witnesses, as such the appellants deserve benefit of doubt, is not acceptable.

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27. It was also argued on behalf of the defence counsel that the prosecution has not been able to prove the motive of the occurrence and if any motive is attributed, it is only against appellant Sahdeo Mahto with whom the deceased had some altercation on the point of grazing of the crops in the field by his cattle and appellant Sahdeo Mahto had threatened the deceased to do away with his life. The learned Advocate submitted that so far as other appellants are concerned, no motive has been attributed against them and as such, they deserve the benefit of doubt. I am of the

view that in view of the overwhelming evidence that all the appellants had participated in committing the offence and that they had common object to cause such injuries to Ramchandra Singh which may result in his death, the appellants no. 2 to 10 do not deserve benefit of doubt and hence I reject this argument of the learned defence counsel also.

28. It has been argued by the learned defence counsel that the F.I.R. of this case as well as the written report of the deceased (Ext.1) are ante-dated and highly doubtful piece of documents. His submission was that as per the endorsement on formal F.I.R. (Ext.7), the formal F.I.R. of this case was drawn at 7 A.M. on 24.3.1983 when the written report of the deceased (Ext.1) was submitted by P.W.1 in the concerned Police Station but the evidence of P.W.11, S.I. Parsuram Singh, is that on that very date he was deputed at Goswra Gram and at about 7 A.M. he received the said written statement at village Goswra and then forwarded it to the Police Station concerned for institution of the case. In my view, only on the basis of the admission of P.W.11 that he received Ext.1 at village Goswra, the inference cannot be drawn that the F.I.R. which was registered on the basis of Ext.1, was ante-dated document.

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29. With regard to the submission that the written report (Ext.1) attributed to the deceased is not a genuine document, it was argued by the learned defence counsel that

as per the evidence of P.W.5 Dr.B.K.Sethy, the injured Ramchandra Singh (deceased) was admitted to Nazrath Hospital on 24.3.1983 at 1.45 A.M. with a history of having been beaten by several persons and a requisition was also sent to the police in this regard but the evidence of P.W.11 Parsuram Singh is that he had not received any requisition from Nazrath Hospital for recording the evidence of injured Ramchandra Singh rather his evidence will show that during the entire day on 24.3.1983, he did not visit Nazrath Hospital for recording the evidence of injured Ramchandra Singh and only on 25.3.1983 he visited Nazrath Hospital for recording his evidence but as the said Ramchandra Singh was found unconscious, he had returned back to the Police Station concerned without recording his statement and only after receiving the injury report of the deceased (Ext.8). The learned defence counsel submitted that since the injured was unconscious before his being admitted to the Hospital and he was not in a position to speak, as such no requisition was sent to the Police station concerned for recording the statement of Ramchandra Singh and that is why the Investigating Officer did not visit the hospital on 24.3.83 and when on 25.3.83 he visited the hospital he found Ramchandra Singh unconscious. I am of the view that this argument of the defence counsel has got some weight but I am not in a position to fully accept this argument in view of the evidence of P.W.5 Dr. B.K.Sethy that at the time of

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admission, the injured was fully conscious and his speech was fair and he had himself told him that he was beaten by ten persons. P.W.5 is definitely an independent witness and there is nothing on record that he is related to the informant or he is influenced by the informant side in any manner, so there is no reasonable ground to believe that he has falsely deposed that Ramchandra Singh (deceased) was in conscious position and was in a position to speak when he was admitted into the Hospital. Paragraph 8 of his deposition shows that he had also sent requisition to the concerned Police Station but the police did not act quickly as a result of which the injured went in coma and only one day prior to his death, he regained consciousness on 8.4.1983 when his statement (Ext.9) was recorded by P.W.11. The above circumstances also show that when the police did not visit the Nazarath Hospital even after sending the requisition, then P.W.1 submitted written report of the deceased in the Police Station on the next day of the occurrence. Under such circumstance, it cannot be held that the written statement of the deceased is a doubtful piece of document and that the F.I.R. of this case is ante-dated.

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30. On the basis of the above discussion, I find that there are sufficient materials on record to hold that all the above-named appellants after forming an unlawful assembly and with common object to commit murder of deceased Ramchandra Singh had gone to the **Khalihan** of deceased

Ramchandra Singh situated at Mahadeo Asthan Dhanakdobh and caused injuries to the deceased by means of bhala and lathi which resulted in his death. Under such circumstances, I hold that the trial court has rightly convicted the appellants under Sections 302/109, 302/149 and under different sections of the I.P.C. and there is no need of any interference either in the conviction or in the sentence passed by the learned trial court.

31. In the result, I find no merit in all these three criminal appeals and accordingly, all these appeals are dismissed and the conviction and sentence passed against the appellants by the trial court under different sections of the I.P.C. are hereby upheld. The appellants are on bail, as such their bail bonds are cancelled and they are directed to surrender before the learned trial court at once to serve out the remaining part of their sentence failing which the trial court shall take coercive steps to procure the attendance of the appellants.

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(Syed Md. Mahfooz Alam, J.)

I agree

Sudhir Kumar Katriar, J.

(Sudhir Kumar Katriar, J.)

Patna High Court, Patna
The 29th September, 2008
N.A.F.R. (B.T.)